

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

WOLFGANG VON VADER,

Plaintiff,

vs.

CIVIL ACTION  
No. 10-3065-SAC

CLAUDE CHESTER,

Defendant.

MEMORANDUM AND ORDER

This matter is a civil rights action filed by a prisoner in federal custody. By an order entered on October 26, 2010, the court granted plaintiff to and including November 30, 2010, to submit a motion for leave to proceed in forma pauperis, or, in the alternative, the filing fee and to submit an amended complaint.

Plaintiff was advised the failure to file a timely response might result in the dismissal of this matter without prejudice and without additional prior notice, but there has been no response.

A court has the inherent authority to dismiss an action for failure to prosecute. *Link v. Wabash R. Co.*, 370 U.S. 626, 630-31 (1962). Federal Rule of Civil Procedure 41(b) authorizes the

involuntary dismissal of an action for failure to prosecute or to comply with procedural rules or orders of the court. While the text of Rule 41(b) contemplates such dismissal upon the motion of a defendant, the rule has been interpreted to allow the sua sponte dismissal of an action. *Link, id.; Rogers v. Andrus Transp. Services*, 502 F.3d 1147, 1151 (10<sup>th</sup> Cir. 2007).

The court finds plaintiff has failed to prosecute this action and has been given adequate notice of the court's intention to dismiss this matter for lack of prosecution.

IT IS, THEREFORE, BY THE COURT ORDERED this matter is dismissed pursuant to Rule 41(b) for lack of prosecution.

A copy of this order shall be transmitted to the plaintiff.

**IT IS SO ORDERED.**

Dated at Topeka, Kansas, this 7<sup>th</sup> day of December, 2010.

S/ Sam A. Crow  
SAM A. CROW  
United States Senior District Judge